

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

KYOCERA AVX COMPONENTS)	
CORPORATION,)	
)	
Plaintiff,)	
)	Civil Action No.
v.)	6:22-cv-02440-TMC
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
_____)	

FIRST AMENDED COMPLAINT FOR REFUND

COMES NOW, KYOCERA AVX Components Corporation (“KYOCERA AVX”), by and through its undersigned counsel, and alleges as follows:

INTRODUCTION

1. KYOCERA AVX brings this action under 26 U.S.C. § 7422 for a refund of \$5,732,355 in Internal Revenue Code Section 965¹ tax, and \$1,310,162 in federal income tax, which it overpaid to the Internal Revenue Service (“IRS”) for its tax year beginning April 1, 2017, and ending March 31, 2018 (“TYE March 31, 2018”).

¹ All “Section” references herein are to sections of the U.S. Internal Revenue Code of 1986, as amended.

2. Within the past two years KYOCERA AVX has filed three refund claims with the IRS requesting refunds of overpaid Section 965 tax and overpaid federal income tax for its TYE March 31, 2018. Those refund claims total \$20,407,122. In its first refund claim, filed on an IRS Form 1120X amended tax return, KYOCERA AVX sought a refund of \$7,632,260 of Section 965 tax and \$1,310,162 of federal income tax. In its second refund claim, filed on an IRS Form 843, KYOCERA AVX sought a refund of an additional \$5,732,355 of Section 965 tax. In its third refund claim, also filed on an IRS Form 843, KYOCERA AVX sought a refund of an additional \$5,732,355 of Section 965 tax.

3. On or about March 13, 2023, the IRS notified KYOCERA AVX that it had accepted changes set forth on its amended tax return which decreased its tax liability by \$43,853,924, and that it would soon receive a refund check. A copy of the IRS's acceptance letter is attached as Exhibit 1.

4. On or about March 17, 2023, the IRS issued a \$13,355,782.77 refund to KYOCERA AVX. A copy of the IRS's refund check is attached as Exhibit 2.

5. The \$13,355,782.77 refund included the overpaid Section 965 tax KYOCERA AVX sought in its first and second refund claims, plus a small amount of interest the IRS had previously charged.

6. Upon information and belief, the IRS has not accepted or denied the portion of KYOCERA AVX's first refund claim seeking a refund of \$1,310,162, and

has not accepted or denied KYOCERA AVX's third refund claim seeking a Section 965 tax refund of \$5,732,355.

7. Through this Amended Complaint, KYOCERA AVX seeks a refund of its overpaid federal income tax (\$1,310,355) as set forth in its first refund claim, and a refund of the remaining amount of its overpaid Section 965 taxes (\$5,732,355) as set forth in its third refund claim.

PARTIES

8. Plaintiff KYOCERA AVX is a Delaware corporation whose principal place of business and principal office is located at 1 AVX Boulevard, Fountain Inn, Greenville County, South Carolina 29644.

9. Prior to October 1, 2021, KYOCERA AVX was known as AVX Corporation.

10. Defendant is the United States of America. The actions complained of herein were undertaken by the IRS and the U.S. Department of the Treasury ("Treasury").

JURISDICTION AND VENUE

11. This Court has jurisdiction over this tax refund matter pursuant to 26 U.S.C. §§ 7422(a) and 6532(a)(1), and 28 U.S.C. §§ 1340 and 1346(a)(1).

12. Venue properly lies in this judicial district pursuant to 28 U.S.C. § 1402(a)(1) because KYOCERA AVX's principal place of business and its principal office are in Fountain Inn, South Carolina, which is within this judicial district.

13. KYOCERA AVX has satisfied the jurisdictional prerequisites of 26 U.S.C. §§ 7422(a) and 6532(a)(1) because, on or about July 6, 2021, KYOCERA AVX timely filed a claim for a refund with the IRS, on IRS Form 1120X, Amended U.S. Corporation Income Tax Return, for its TYE March 31, 2018 ("2018 Amended Return"), requesting a refund of \$8,933,422, of which \$1,310,162 has not been accepted or denied. The 2018 Amended Return is attached as Exhibit 3.

14. KYOCERA AVX has satisfied the jurisdictional prerequisites of 26 U.S.C. §§ 7422(a) and 6532(a)(1) because, on or about July 15, 2022, KYOCERA AVX timely filed a claim for a refund of \$5,732,355 with the IRS, on IRS Form 843, Claim for Refund and Request for Abatement ("Form 843 Refund Claim"), which has not been accepted or denied by the IRS. The Form 843 Refund Claim is attached as Exhibit 5.

RELEVANT FACTS

15. KYOCERA AVX is a leading international manufacturer and supplier of advanced electronic components. KYOCERA AVX frequently designs and manufactures new-to-market products and solutions designed to meet its customer's

unique requirements. Consistent with its focus on innovation, KYOCERA AVX holds numerous patents, makes significant investments in research and development activities, and submits several new patent applications every year.

16. KYOCERA AVX is one of the largest employers in South Carolina. KYOCERA AVX employs over 900 workers in Greenville and Myrtle Beach. KYOCERA AVX employs an additional approximately 14,000 workers in the United States, Europe, and Asia. KYOCERA AVX frequently operates internationally through its various foreign subsidiaries.

17. Within the past two years KYOCERA AVX has filed three refund claims with the IRS for its TYE March 31, 2018, seeking tax refunds totaling \$20,407,122.

a. KYOCERA AVX's First Refund Claim

18. For its TYE March 31, 2018, KYOCERA AVX timely filed its IRS Form 1120, U.S. Corporation Income Tax return ("2018 Original Return").

19. On July 6, 2021, KYOCERA AVX filed its 2018 Amended Return on IRS Form 1120X, Amended U.S. Corporation Income Tax Return, for its TYE March 31, 2018. *See Exhibit 3.*

20. On its 2018 Amended Return KYOCERA AVX increased its research and development ("R&D") tax credit by \$1,310,162. KYOCERA AVX increased

its R&D credit because its 2018 Original Return did not capture the full scope of its qualified R&D activities.

21. Based on its increased R&D credit, KYOCERA AVX claimed an income tax refund of \$1,310,162 on its 2018 Amended Return.

22. On its 2018 Amended Return KYOCERA AVX also claimed a \$143,483,636 deduction under Section 245A of the Internal Revenue Code, which allows certain U.S. parent corporations to claim a deduction for “any dividend received” from certain foreign subsidiaries after December 31, 2017. The Section 245A deduction, commonly referred to as the “dividend received deduction,” was enacted as part of the Tax Cuts and Jobs Act of 2017 (“TCJA”). *See* 115 P.L. 97, 131 Stat. 2054 (2017), §14101(a).

23. Due to a computational error on its 2018 Original Return, KYOCERA AVX increased its Section 965 tax liability on its 2018 Amended Return by \$1,343,421. *See Exhibit 3*, p. 5.

24. Correcting the \$1,343,421 Section 965 computational error, and claiming the \$143,483,636 dividend received deduction, reduced KYOCERA AVX’s Section 965 tax liability by \$43,853,924. *See Exhibit 1; Exhibit 3*, p. 5.

25. Based on its reduced Section 965 tax liability, KYOCERA AVX claimed a Section 965 tax refund of \$7,632,260 on its 2018 Amended Return.

b. KYOCERA AVX's Second Refund Claim

26. On July 14, 2021, KYOCERA AVX made an installment payment of \$5,732,355 toward its Section 965 tax liability, as reported on its 2018 Original Return.

27. On March 22, 2022, KYOCERA AVX filed an IRS Form 843, Request for Refund and Abatement, requesting a refund of its \$5,732,355 installment payment. A copy of the March 22, 2022, Form 843 Request for Refund is attached as Exhibit 4.

c. KYOCERA AVX's Third Refund Claim

28. On July 15, 2022, KYOCERA AVX made an installment payment of \$5,732,355.00 toward its Section 965 tax liability, as reported on its 2018 Original Return.

29. Also on July 15, 2022, KYOCERA AVX filed an IRS Form 843, Request for Refund and Abatement, requesting a refund of its \$5,732,355 installment payment. *See* Exhibit 5.

d. The IRS's Partial Acceptance of KYOCERA AVX's Refund Claims.

30. On March 13, 2023, the IRS notified KYOCERA AVX that it had accepted changes set forth on its 2018 Amended Return and decreased its previously reported tax liability by \$43,853,924. *See* Exhibit 1.

31. In its March 13, 2023, acceptance letter the IRS also notified KYOCERA AVX that it “should receive [a refund] within 2-3 weeks.” See Exhibit 1, p. 2.

32. On March 17, 2023, KYOCERA AVX received a refund from the IRS in the amount of \$13,355,782.77. See Exhibit 2.

33. The \$13,355,782.77 refund received by KYOCERA AVX included the following amounts:

	Amount	Description	Exhibit
a.	\$7,623,260.00	Section 965 tax refund sought in first refund claim	3
b.	\$5,732,355.00	Section 965 tax refund sought in second refund claim	4
c.	\$167.77	Refund of interest overpayment	1
Total:	\$13,355,782.77		

34. The \$13,355,782.77 refund did not include the \$1,310,162 federal income tax refund KYOCERA AVX sought in its first refund claim.

35. The \$13,355,782.77 refund did not include the \$5,732,355 Section 965 tax refund KYOCERA AVX sought in its third refund claim.

36. The following chart depicts the status of KYOCERA AVX’s three refund claims:

	Form (Exhibit)	Tax Year	Amount	Type of Tax	Date Filed	Status
1.	1120X (Exh. 3)	FY2018	\$1,310,162	Federal Income	7/06/2021	Not accepted or denied
		FY2018	\$7,623,260	Section 965		Refund received 3/17/2023
2.	843 (Exh. 4)	FY2018	\$5,732,355	Section 965	3/22/2022	Refund received 3/17/2023
3.	843 (Exh. 5)	FY2018	\$5,732,355	Section 965	7/15/2022	Not accepted or denied

37. Although KYOCERA AVX filed its 2018 Amended Return (Exhibit 3) on July 26, 2021, well over six months ago, the IRS has failed to accept or deny KYOCERA AVX's \$1,310,162 federal income tax refund claim.

38. Although KYOCERA AVX filed its third refund claim (Exhibit 5) over six months ago, the IRS has failed to accept or deny KYOCERA AVX's \$5,732,355 Section 965 tax refund claim.

COUNT I

(Claim Under 26 U.S.C. § 7422 for a Federal Income Tax Refund of \$1,310,162)

39. KYOCERA AVX incorporates, as if fully restated herein, the allegations contained in paragraphs 1 through 38 of this Amended Complaint.

40. KYOCERA AVX incurred additional qualified R&D expenses for its TYE March 31, 2018, which entitle KYOCERA AVX to an additional R&D credit of \$1,310,162.

41. KYOCERA AVX's additional R&D credit entitles it to a federal income tax refund of \$1,310,162 for its TYE March 31, 2018, or such greater amount of tax and interest, including overpayment interest, as provided by law.

COUNT II

(Claim Under 26 U.S.C. § 7422 for a Section 965 Tax Refund of \$5,732,355)

41. KYOCERA AVX incorporates, as if fully restated herein, the allegations contained in paragraphs 1 through 38 of this Amended Complaint.

42. The IRS accepted KYOCERA AVX's dividend received deduction as set forth on its 2018 Amended Return.

43. The IRS accepted KYOCERA AVX's computational increase in its Section 965 tax liability, as set forth on its 2018 Amended Return.

44. The IRS accepted KYOCERA AVX's reduced Section 965 tax liability, resulting from its dividend received deduction, as set forth on its 2018 Amended Return.

45. KYOCERA AVX overpaid its Section 965 tax liability by \$19,087,970.

46. The IRS refunded only \$13,355,615 of that amount to KYOCERA AVX.

47. KYOCERA AVX is entitled to an additional Section 965 tax refund of \$5,732,355 for its TYE March 31, 2018, or such greater amount of tax and interest, including overpayment interest, as provided by law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, KYOCERA AVX, demands a jury trial as to all triable issues and prays for the following relief:

48. That the Court enter judgment in favor of KYOCERA AVX and against the United States of America on Count I of this Amended Complaint for a refund of \$1,310,162 of federal income tax it overpaid, plus interest as provided by law;

49. That the Court enter judgment in favor of KYOCERA AVX and against the United States of America on Count II of this Amended Complaint for a refund of \$5,732,355 of Section 965 tax it overpaid, plus interest as provided by law; and,

50. That the Court award KYOCERA AVX such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ D. Gregory Placone

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*Attorneys for Plaintiff KYOCERA AVX
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June 15, 2023

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2023, I filed the foregoing First Amended Complaint for Refund in *KYOCERA AVX Components Corporation v. United States* with the Clerk of the Court via CM/ECF electronic filing.

Copies of the Amended Complaint are being served upon the following via certified mail:

Civil Process Clerk
Office of the U.S. Attorney
55 Beattie Place
Suite 700
Greenville, SC 29601

The Honorable Merrick B. Garland
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Daniel Werfel
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/s/ D. Gregory Placone
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